

**STATE OF RHODE ISLAND
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

OFFICE OF COMPLIANCE & INSPECTION

IN RE: Rhode Island Bioenergy Facility, LLC

FILE NO.: OCI-AIR-23-103

NOTICE OF VIOLATION

A. INTRODUCTION

Pursuant to Sections 42-17.1-2(21) and 42-17.6-3 of the Rhode Island General Laws, as amended, (“R.I. Gen. Laws”) you are hereby notified that the Director of the Rhode Island Department of Environmental Management (“Director” of “RIDEM”) has reasonable grounds to believe that the above-named party (“Respondent”) has violated certain statutes and/or administrative regulations under RIDEM's jurisdiction.

B. ADMINISTRATIVE HISTORY

Respondent operates an industrial facility that converts food waste into energy. The facility is subject to Rhode Island’s air pollution regulations and has a permit issued by RIDEM to emit air pollutants. Respondent has violated numerous permit conditions and air pollution regulations during operation of the facility that are the subject of this Notice of Violation (“NOV”). On 24 August 2023, RIDEM issued an informal notice to Respondent for some of the violations that are the subject of the NOV. On 29 September 2023, RIDEM received a letter from Respondent in response to the notice. RIDEM’s review of the letter revealed that some, but not all, requirements of the notice were resolved.

C. FACTS

- (1) The property is located at 289 Scituate Avenue in Johnston, Rhode Island. The property includes an industrial anaerobic digester facility that produces natural gas from recycled food and other organic waste (“Facility”).
- (2) The Facility is a stationary source of air pollutants subject to Rhode Island’s Air Pollution Control (“APC”) Regulations (“APC Rules”), including, but not limited to, 250-RICR-120-05-9 (“Part 9”), titled *Air Pollution Control Permits*, 250-RICR-120-05-14 (“Part 14”), titled *Record Keeping and Reporting*, and 250-RICR-120-05-16 (“Part 16”), titled *Operation of Air Pollution Control Systems*.
- (3) On 20 January 2016, RIDEM issued a minor source air permit approval no. 2302-2312 (“Permit”) to Orbit Energy Rhode Island, LLC (“Orbit”) to emit air pollutants from the Facility.
- (4) On 27 July 2021, Anaergia Services LLC (“Anaergia”) acquired the Facility from Orbit and began operating the Facility. At the time of acquisition, Anaergia

formed a new corporation named Rhode Island Bioenergy Facility, LLC (“RIBF”). Since the date of acquisition, Respondent has changed names from RIBF to Rhode Island Bioenergy, LLC and back to RIBF.

Facts Relating to Part 9 (Permit Non-Compliance)

- (5) On 18 August 2021, RIDEM transferred the Permit from Orbit to Respondent to document the change in ownership and name (“2021 Permit”). Respondent was responsible for complying with all applicable APC Rules, including Part 16, and the 2021 Permit. The 2021 Permit included, but was not limited to, the following conditions:

Requirements Related to the 2.0 MW Engine and 1.2 MW Engine (“Engines”):

- (a) Condition No. I.C.8 (Monitoring)
The owner/operator shall install, operate, and maintain a continuous parameter monitoring system (“CPMS”) for each engine.
- (b) Condition No. I.C.9 (Monitoring)
The owner/operator shall prepare a site-specific monitoring plan for the CPMS that addresses the monitoring system design, data collection, and the quality assurance and quality control elements outlined in paragraph (a) through (f) of this section.
- a. The performance criteria and design specifications for the monitoring system equipment, including the sample interface, detector signal analyzer, and data acquisition and calculations.*
 - b. Sampling interface (e.g. thermocouple) location such that the monitoring system will provide representative measurements.*
 - c. Equipment performance evaluations, system accuracy audits, or other audit procedures.*
 - d. Ongoing operation and maintenance procedures.*
 - e. At least annually the owner/operator shall conduct the CPMS equipment performance evaluation, system accuracy audits, or other audit procedures specified in your site-specific monitoring plan.*
 - f. The owner/operator shall conduct a performance evaluation of each CPMS in accordance with the site-specific monitoring plan.*
- (c) Condition No. I.D.1 (Compliance Demonstration/Stack Testing)
Within 180 days of issuance of this permit, performance testing shall be conducted for each engine for nitrogen oxides, carbon monoxide, volatile organic compounds, sulfur dioxide, particulate matter and ammonia. Performance testing shall be performed with the firing of both biogas and natural gas.

Requirements Related to Austep Flares (“Flares”)

- (d) Condition No. II.D (Compliance Demonstration/Stack Testing)
Within 180 days of permit issuance, emissions testing shall be conducted to demonstrate compliance with Conditions II.A.1 and II.A.2 for each flare. Additionally, during the initial performance test, the owner/operator shall measure the emissions of 1-3-butadiene.

Requirements Related to Austep Wet Packed Tower Scrubber for Digestive Dryer (“Digestive Dryer Wet Scrubber”):

- (e) Condition No. III.C.1 (Monitoring)
The following parameters shall be monitored continuously and checked a minimum of once per day and the date, time and measurement shall be recorded:
- b. The pressure drop across the wet scrubber*
 - c. The scrubbing liquid flow rate for each stage*
- (f) Condition No. III.E.1 (Record Keeping and Reporting)
The owner/operator shall maintain the following records and provide such records to the Office of Air Resources upon request:
- a. Records of the pH of the second stage scrubbing liquid, pressure drop across the scrubber, scrubbing liquid flow rate measurements for each stage for the wet scrubber.*
- (g) Condition No. III.D.1 (Compliance Demonstration/Stack Testing)
Within 180 days of permit issuance, emissions testing shall be conducted to demonstrate compliance with Conditions III.A.1 – 3. In addition, emissions testing shall be conducted to determine and quantify individual species of volatile organic compounds (VOC) emissions and to determine if there are emissions of any hazardous air pollutants.

Requirements Related to H₂S Pretreatment System:

- (h) Condition No. V.B.2 (Monitoring)
The following parameters for the H₂S pretreatment system shall be monitored continuously and checked a minimum of once per day and the date, time and measurements shall be recorded:
- b. The pressure drop across the H₂S pretreatment system; and*
 - c. The scrubbing liquid flow rate in the H₂S pretreatment system.*
- (6) On 1 November 2022, RIDEM revised the 2021 Permit and issued it to Respondent (“2022 Permit”) to document a name change and approve permit

modifications including new monitoring and recordkeeping requirements related to the Digestive Dryer Wet Scrubber. In addition to the conditions listed in Fact 5 above, the following new conditions were included in the 2022 Permit:

(a) Condition No. III.C.1 (Monitoring)

The following parameters shall be monitored continuously and checked a minimum of once per day and the date, time and measurement shall be recorded:

d. The set point frequency of the purge valve.

(b) Condition No. III.E.1 (Record Keeping and Reporting)

c. The owner/operator shall maintain the following records and provide such records to the Office of Air Resources upon request:

Record the set point frequency of the purge valve once each day when the wet scrubber is in operation.

(7) On 25 July 2023, RIDEM inspected the Facility. Based on the inspection findings and subsequent records review, RIDEM determined that Respondent was not in full compliance with the 2022 Permit, including but not limited to, the following conditions:

(a) I.C.8 – failed to install, operate, and maintain a CPMS monitoring system for the Engines from the date Respondent began operating at the Facility. Respondent was collecting the data regarding the operation of the Selective Catalytic Reduction by hand daily.

(b) I.C.9 – did not produce a site-specific monitoring plan for the CPMS.

(c) I.D.1 – failed to perform stack test.

(d) II.D – failed to perform stack test.

(e) III.C.1.b, III.C.1.c, and III.E.1.a – did not record all the data as required. The weekly reports submitted to RIDEM did not include the pressure drop data and only recorded a “yes/no” statement regarding the liquid flow rate rather than the actual flow measurement.

(f) III.C.1.d and III.E.1.c – The weekly reports submitted to RIDEM did not include the set point frequency of the purge valve, which must be recorded once each day when the Digestive Dryer Wet Scrubber is in operation.

(g) III.D.1 – failed to perform stack test.

(h) V.B.2.c – failed to record the scrubbing liquid flow rate in the H₂S pretreatment system.

- (8) On 5 October 2023, RIDEM issued a letter to Respondent (“October Letter”). The letter extended the deadline for submission of the CPMS monitoring plan to 30 days of receipt of the letter.
- (9) On 20 March 2024, RIDEM inspected the Facility. During the inspection Respondent’s Plant Manager, Kevin Bell, stated that the digestate dryer had been offline for 9 months. Based on this information, Respondent resolved the non-compliance with the 2022 Permit Condition Nos. III.C.1.b through d, III.E.1.a, and III.E.1.c. (Facts 7 [e] and [f] above) on approximately 20 June 2023 (the date Mr. Bell stated the dryer went offline). The inspection revealed that the issues listed in Facts 7 (a) through (d), (g), and (h) above remained unresolved.
- (10) On 9 May 2024, RIDEM inspected the Facility. Based on the results of inspection, RIDEM determined that Respondent was now in compliance with the 2022 Permit Condition Nos. I.C.8 and V.B.2.c (Facts 7 [a] and [h] above, respectively).
- (11) On 30 May 2024, RIDEM revised the 2022 Permit and issued it to Respondent for Facility wide modifications to the existing air pollution control systems, including changes to the requirements for operation of the Flares, and issued a new permit for the installation of a two-stage odor control system (approval no. 2587), and a new permit for the biogas upgrading system (approval no. 2569) (collectively, “2024 Permit”).
- (12) On 6 January 2025, Respondent submitted to RIDEM a stack test report containing the results for emission testing of the Flares and the Austep wet scrubber for the grit removal building and the biopulper tank (“Odor Control Wet Scrubber”). RIDEM reviewed the report and determined that the Flares and Odor Control Wet Scrubber are operating in compliance with the 2024 Permit.
- (13) To date, Respondent has failed to comply with the following conditions of the 2024 Permit:
 - (a) I.C.9 – submission of a site-specific monitoring plan for the CPMS since Respondent began operating the Facility.
 - (b) I.D.1 – completion of a stack test on each of the Engines.
 - (c) III.D.1 – completion of a stack test on the Digestive Dryer Wet Scrubber.

Facts Relating to Part 16 (Venting)

- (14) On 23 February 2024, 12 March 2024, and 19 September 2024, Respondent submitted Notices of Venting reports to RIDEM. RIDEM completed a review of the reports which revealed that the Facility experienced malfunctions that resulted in the emission of untreated biogas to the atmosphere on the following four dates:

- (a) 20 February 2024 for 1 hour 33 minutes
- (b) 21 February 2024 for 2 hours and 40 minutes
- (c) 6 March 2024 for approximately 4 hours
- (d) 1 September 2024 for 13 hours and 35 minutes

Per Part 16, any excess emissions during a malfunction are a violation of the APC Rules.

D. VIOLATION

Based on the foregoing facts, the Director has reasonable grounds to believe that you have violated the following statutes and/or regulations:

- (1) **APC Rules, Part 9.10(H)** – requiring any person who receives a permit to comply with all conditions in the permit.
- (2) **APC Rules, Part 16.3** – requiring any air pollution control system to be operated according to its design specifications whenever the source on which it is installed is in operation or is emitting air contaminants.
- (3) **APC Rules, Part 16.4** –excess emissions during a malfunction is a violation.

E. ORDER

Based upon the violations alleged above and pursuant to R.I. Gen. Laws Section 42-17.1-2(21), you are hereby ORDERED to:

- (1) **Within 30 days of receipt of the NOV**, submit a copy of the CPMS monitoring plan to RIDEM's Office of Air Resources for review in accordance with the 2024 Permit condition I.C.9.
- (2) **Within 30 days of receipt of the NOV**, complete all stack testing on the Engines and Digestive Dryer Wet Scrubber in accordance with the requirements of the 2024 Permit condition I.D.1 and condition II.D.1.
- (3) The CPMS monitoring plan is subject to RIDEM's approval. Upon review, RIDEM shall provide written notification either granting formal approval or stating the deficiencies therein. Within 14 days (unless a longer time is specified) of receiving a notification of deficiencies in the plan, submit to RIDEM a modified plan or additional information necessary to correct the deficiencies.

F. PENALTY

- (1) Pursuant to R.I. Gen. Laws Section 42-17.6-2, the following administrative penalty, as more specifically described in the attached penalty summary and worksheets, is hereby ASSESSED, jointly and severally, against each named respondent:

\$195,533

- (2) The proposed administrative penalty is calculated pursuant to Rhode Island's *Rules and Regulations for Assessment of Administrative Penalties* (250-RICR-130-00-1) ("Penalty Rules") and must be paid to RIDEM within 30 days of your receipt of the NOV. Penalty payments shall be by one of two methods:

- (a) By certified check, cashier's check, or money order made payable to the **General Treasury – Water and Air Protection Program** and forwarded to:

Administrator, RIDEM Office of Compliance and Inspection
235 Promenade Street, Suite 220
Providence, RI 02908-5767.

- (b) By wire transfer in accordance with instructions provided by RIDEM.

- (3) Penalties assessed against Respondent in the NOV are penalties payable to and for the benefit of the State of Rhode Island and are not compensation for actual pecuniary loss.
- (4) If any violation alleged herein shall continue, then each day during which the violation occurs or continues shall constitute a separate offense and the penalties and/or costs for that violation shall continue to accrue in the manner set forth in the attached penalty summary and worksheets. The accrual of additional penalties and costs shall be suspended if RIDEM determines that reasonable efforts have been made to comply promptly with the NOV.

G. RIGHT TO ADMINISTRATIVE HEARING

- (1) Pursuant to R.I. Gen. Laws Chapters 42-17.1, 42-17.6, 42-17.7 and 42-35, each named respondent is entitled to request a hearing before RIDEM's Administrative Adjudication Division regarding the allegations, orders and/or penalties set forth in Sections B through F above. All requests for hearing MUST:

- (a) Be in writing. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.6-4(b).
- (b) Be **RECEIVED** by RIDEM's Administrative Adjudication Division, at the following address, within 20 days of your receipt of the NOV. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.7-9:

Administrative Clerk
RIDEM - Administrative Adjudication Division
235 Promenade Street, Room 350
Providence, RI 02908-5767

- (c) Indicate whether you deny the alleged violations and/or whether you believe that the administrative penalty is excessive. See R.I. Gen. Laws Section 42-17.6-4(b).
 - (d) State clearly and concisely the specific issues which are in dispute, the facts in support thereof and the relief sought or involved, if any. See Part 1.7(B) of RIDEM's *Rules and Regulations for the Administrative Adjudication Division* (250-RICR-10-00-1).
- (2) A copy of each request for hearing must also be forwarded to:

Jenna Giguere, Esquire
RIDEM - Office of Legal Services
235 Promenade Street, 4TH Floor
Providence, RI 02908-5767

- (3) Each named respondent has the right to be represented by legal counsel at all administrative proceedings relating to this matter.
- (4) Each respondent must file a separate and timely request for an administrative hearing before RIDEM's Administrative Adjudication Division as to each violation alleged in the written NOV. If any respondent fails to request a hearing in the above-described time or manner regarding any violation set forth herein, then the NOV shall automatically become a Final Compliance Order enforceable in Superior Court as to that respondent and/or violation and any associated administrative penalty proposed in the NOV shall be final as to that respondent. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and (vi) and 42-17.6-4(b) and (c).
- (5) Failure to comply with the NOV may subject each respondent to additional civil and/or criminal penalties.
- (6) The NOV does not preclude the Director from taking any additional enforcement action nor does it preclude any other local, state, or federal governmental entities from initiating enforcement actions based on the acts or omissions described herein.

If you have any legal questions, you may contact (or if you are represented by an attorney, please have your attorney contact) Jenna Giguere of RIDEM's Office of Legal Services at (401) 537-4409 or at jenna.giguere@dem.ri.gov. All other inquiries should be directed to Shawna Smith of RIDEM's Office of Compliance and Inspection at (401) 537-4449 or at shawna.smith@dem.ri.gov.

Please be advised that any such inquiries do not postpone, eliminate, or otherwise extend the need for a timely submittal of a written request for a hearing, as described in Section G above.

FOR THE DIRECTOR:

Christina Hoefsmit, Acting Administrator
RIDEM Office of Compliance and Inspection

Dated: _____

CERTIFICATION

I hereby certify that on the _____ day of _____
the within NOV was forwarded to:

Rhode Island Bioenergy Facility, LLC
c/o Corporation Service Company, Resident Agent
222 Jefferson Boulevard, Suite 200
Warwick, RI 02888

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: Air Pollution
 File No.: OCI-AIR-23-80
 Respondent: Rhode Island Bioenergy Facility, LLC

GRAVITY OF VIOLATION					
SEE ATTACHED "PENALTY MATRIX WORKSHEETS."					
VIOLATION No. & CITATION	APPLICATION OF MATRIX		PENALTY CALCULATION		AMOUNT
	Type	Deviation	Penalty from Matrix	Number or Duration of Violations	
D (1) – Failure to comply with permit conditions (Installation of CPMS)	Type I (\$10,000 Max. Penalty) *	Major	\$7,500	1 violation	\$7,500
D (1) – Failure to comply with permit conditions (Submission of CPMS plan)	Type II (\$5,000 Max. Penalty) *	Major	\$5,000	1 violation	\$5,000
D (1) – Failure to comply with permit conditions (Stack testing for Engines and Digestive Dryer Wet Scrubber)	Type I (\$10,000 Max. Penalty) *	Moderate	\$2,500	27 months	\$67,500
D (1) – Failure to comply with permit conditions (Stack testing for Flares)	Type I (\$10,000 Max. Penalty) *	Moderate	\$2,500	20 months	\$50,000
D (1) – Failure to comply with permit conditions (Monitoring & Record Keeping/Reporting Requirements)	Type II (\$5,000 Max. Penalty) *	Major	\$5,000	2 violations	\$10,000
D (2) & D (3) – Failure to comply with operating requirements (Excess emissions during a malfunction)	Type I (\$10,000 Max. Penalty) *	Major	\$10,000	4 violations	\$40,000
SUB-TOTAL					\$180,000

*Maximum Penalties represent the maximum penalty amounts per day, per violation.

ADMINISTRATIVE PENALTY SUMMARY (continued)

ECONOMIC BENEFIT FROM NONCOMPLIANCE			
COSTS OF COMPLIANCE, EQUIPMENT, O&M, STUDIES OR OTHER DELAYED OR AVOIDED COSTS, INCLUDING INTEREST AND/OR ANY COMPETITIVE ADVANTAGE DERIVED OVER ENTITIES THAT COMPLY. NOTE: ECONOMIC BENEFIT MUST BE INCLUDED IN THE PENALTY UNLESS: - THERE IS NO IDENTIFIABLE BENEFIT FROM NONCOMPLIANCE, OR - THE AMOUNT OF ECONOMIC BENEFIT CAN NOT BE QUANTIFIED.			
DESCRIPTION OF BENEFIT	CALCULATION		AMOUNT
Delayed costs associated with stack testing of Engines and Digestive Dryer Wet Scrubber. The economic benefit of non-compliance was determined using an EPA computer model titled <i>BEN</i> that performs a detailed economic analysis. The dates, dollar amounts, and values used in the analysis are listed in this table. The cost to conduct 3 stack tests used in the analysis is \$30,000.	Profit Status	C-Corp	
	Filing Status		
	Initial Capital Investment		
	One-time Non-depreciable Expense	\$30,000	
	First Month of Non-compliance	February 2022	
	Compliance Date	4 October 2023	
	Penalty Due Date	1 June 2025	
	Useful life of Pollution Control		
	Equipment Annual Inflation Rate		
	Discount Compound Rate	9.1%	
SUB-TOTAL			\$8,538

ECONOMIC BENEFIT FROM NONCOMPLIANCE			
COSTS OF COMPLIANCE, EQUIPMENT, O&M, STUDIES OR OTHER DELAYED OR AVOIDED COSTS, INCLUDING INTEREST AND/OR ANY COMPETITIVE ADVANTAGE DERIVED OVER ENTITIES THAT COMPLY. NOTE: ECONOMIC BENEFIT MUST BE INCLUDED IN THE PENALTY UNLESS: - THERE IS NO IDENTIFIABLE BENEFIT FROM NONCOMPLIANCE, OR - THE AMOUNT OF ECONOMIC BENEFIT CAN NOT BE QUANTIFIED.			
DESCRIPTION OF BENEFIT	CALCULATION		AMOUNT
Delayed costs associated with stack testing of Engines and Digestive Dryer Wet Scrubber. The economic benefit of non-compliance was determined using an EPA computer model titled <i>BEN</i> that performs a detailed economic analysis. The dates, dollar amounts, and values used in the analysis are listed in this table. The cost to conduct 3 stack tests used in the analysis is \$30,000.	Profit Status	C-Corp	
	Filing Status		
	Initial Capital Investment		
	One-time Non-depreciable Expense	\$30,000	
	First Month of Non-compliance	November 2024	
	Compliance Date	1 June 2025	
	Penalty Due Date	1 June 2025	
	Useful life of Pollution Control		
	Equipment Annual Inflation Rate		
	Discount Compound Rate	9.5%	
SUB-TOTAL			\$1,303

ADMINISTRATIVE PENALTY SUMMARY (continued)

ECONOMIC BENEFIT FROM NONCOMPLIANCE			
COSTS OF COMPLIANCE, EQUIPMENT, O&M, STUDIES OR OTHER DELAYED OR AVOIDED COSTS, INCLUDING INTEREST AND/OR ANY COMPETITIVE ADVANTAGE DERIVED OVER ENTITIES THAT COMPLY. NOTE: ECONOMIC BENEFIT MUST BE INCLUDED IN THE PENALTY UNLESS:			
- THERE IS NO IDENTIFIABLE BENEFIT FROM NONCOMPLIANCE, OR			
- THE AMOUNT OF ECONOMIC BENEFIT CAN NOT BE QUANTIFIED.			
DESCRIPTION OF BENEFIT	CALCULATION		AMOUNT
Delayed costs associated with stack testing for Flares. The economic benefit of non-compliance was determined using an EPA computer model titled <i>BEN</i> that performs a detailed economic analysis. The dates, dollar amounts, and values used in the analysis are listed in this table. The cost to conduct 2 stack tests used in the analysis is \$20,000.	Profit Status Filing Status Initial Capital Investment One-time Non-depreciable Expense First Month of Non-compliance Compliance Date Penalty Due Date Useful life of Pollution Control Equipment Annual Inflation Rate Discount Compound Rate	C-Corp \$20,000 February 2022 4 October 2023 1 June 2025 9.1%	
SUB-TOTAL			\$5,692

COST RECOVERY
ADDITIONAL OR EXTRAORDINARY COSTS INCURRED BY THE DIRECTOR DURING THE INVESTIGATION, ENFORCEMENT AND RESOLUTION OF AN ENFORCEMENT ACTION (EXCLUDING NON-OVERTIME PERSONNEL COSTS), FOR WHICH THE STATE IS NOT OTHERWISE REIMBURSED.
A review of the record in this matter has revealed that RIDEM has not incurred any additional or extraordinary costs during the investigation, enforcement, and resolution of this enforcement action (excluding non-overtime personnel costs), for which the State is not otherwise reimbursed.

TOTAL PENALTY PROPOSED UNDER PENALTY RULES = \$195,533

PENALTY MATRIX WORKSHEET

CITATION: Failure to comply with permit conditions (Installation of CPMS)

VIOLATION NO.: D (1)

TYPE

 X TYPE I

DIRECTLY related to protecting health, safety, welfare, or environment.

 TYPE II

INDIRECTLY related to protecting health, safety, welfare, or environment.

 TYPE III

INCIDENTAL to protecting health, safety, welfare, or environment.

DEVIATION FROM THE STANDARD

THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.

FACTORS CONSIDERED:

Taken from Part 1.10(A)(1)(b) of the Penalty Rules.

- (1) **The extent to which the act or failure to act was out of compliance:** Respondent failed to install, operate, and maintain a CPMS monitoring system as required. The Facility is a stationary source of air pollutants subject to the APC Rules. Compliance with monitoring requirements of the permit is of major importance to the regulatory program.
- (2) **Environmental conditions:** Considered, but not utilized for this calculation.
- (3) **Amount of the pollutant:** Considered, but not utilized for this calculation.
- (4) **Toxicity or nature of the pollutant:** Considered, but not utilized for this calculation.
- (5) **Duration of the violation:** This condition was in the original permit issued to Orbit in 2016, however Orbit did not comply. Respondent became responsible for complying with this condition in accordance with the 2021 Permit. The CPMS was installed and operating in accordance with the permit on 9 May 2024. Respondent was in non-compliance from approximately 18 August 2021 until 9 May 2024, 2 years and 8 months.
- (6) **Areal extent of the violation:** Considered, but not utilized for this calculation.
- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to take reasonable and appropriate steps to prevent the noncompliance. Respondent mitigated the noncompliance by completing the installation of the CPMS.
- (8) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit, or approval issued or adopted by RIDEM, or any law which RIDEM has the authority or responsibility to enforce:** Considered, but not utilized for this calculation.

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- (9) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Respondent had complete control over the violation. Respondent operates the Facility. The violation was foreseeable by Respondent. Respondent was required to install the CPMS within 30 days of receipt of the informal notice but did not comply. Respondent requested a deadline extension in the 29 September 2023 letter, but RIDEM denied the extension.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** RIDEM could have assessed an administrative penalty up to \$10,000 per day of non-compliance.

<u>X</u> MAJOR	MODERATE	MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$10,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$5,000 to \$10,000 \$7,500	\$2,500 to \$5,000	\$1,000 to \$2,500
	MODERATE	\$2,500 to \$5,000	\$1,000 to \$2,500	\$500 to \$1,000
	MINOR	\$1,000 to \$2,500	\$500 to \$1,000	\$100 to \$500

PENALTY MATRIX WORKSHEET

CITATION: Failure to comply with permit conditions (Submission of CPMS Plan)

VIOLATION NO.: D (1)

TYPE

TYPE I

DIRECTLY related to protecting health, safety, welfare, or environment.

X TYPE II

INDIRECTLY related to protecting health, safety, welfare, or environment.

___TYPE III

INCIDENTAL to protecting health, safety, welfare, or environment.

DEVIATION FROM THE STANDARD

THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.

FACTORS CONSIDERED:

Taken from Part 1.10(A)(1)(b) of the Penalty Rules.

- (1) **The extent to which the act or failure to act was out of compliance:** Respondent has not produced a site-specific monitoring plan for the CPMS as required. The Facility is a stationary source of air pollutants subject to the APC Rules. Compliance with monitoring requirements of permits is of importance to the regulatory program.
- (2) **Environmental conditions:** Considered, but not utilized for this calculation.
- (3) **Amount of the pollutant:** Considered, but not utilized for this calculation.
- (4) **Toxicity or nature of the pollutant:** Considered, but not utilized for this calculation.
- (5) **Duration of the violation:** Ongoing, since at least 18 August 2021, approximately 3 years and 9 months to date.
- (6) **Areal extent of the violation:** Considered, but not utilized for this calculation.
- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to take reasonable and appropriate steps to prevent the noncompliance. RIDEM is not aware of what steps, if any, have been taken to mitigate the noncompliance.
- (8) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit, or approval issued or adopted by RIDEM, or any law which RIDEM has the authority or responsibility to enforce:** Considered, but not utilized for this calculation.

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- (9) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Respondent had complete control over the violation. Respondent operates the Facility. The violation was foreseeable by Respondent. Respondent was required to comply within 30 days of receipt of the informal notice but did not comply. Respondent was required to comply within 30 days of the October Letter but has still not complied.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** RIDEM could have assessed an administrative penalty up to \$5,000 per day of non-compliance.

<u>X</u> MAJOR	MODERATE	MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$10,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$5,000 to \$10,000	\$2,500 to \$5,000 \$5,000	\$1,000 to \$2,500
	MODERATE	\$2,500 to \$5,000	\$1,000 to \$2,500	\$500 to \$1,000
	MINOR	\$1,000 to \$2,500	\$500 to \$1,000	\$100 to \$500

PENALTY MATRIX WORKSHEET

CITATION: Failure to comply with permit conditions (Stack testing for Engines and Digestive Dryer Wet Scrubber)

VIOLATION NO.: D (1)

TYPE

 X TYPE I

DIRECTLY related to protecting health, safety, welfare, or environment.

 TYPE II

INDIRECTLY related to protecting health, safety, welfare, or environment.

 TYPE III

INCIDENTAL to protecting health, safety, welfare, or environment.

DEVIATION FROM THE STANDARD

THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.

FACTORS CONSIDERED:

Taken from Part 1.10(A)(1)(b) of the Penalty Rules.

- (1) **The extent to which the act or failure to act was out of compliance:** Respondent failed to complete emission/stack testing for the Engines and Digestive Dryer Wet Scrubber as required. The Facility is a stationary source of air pollutants subject to the APC Rules. Compliance with emissions/stack testing requirements of the permit is of importance to the regulatory program.
- (2) **Environmental conditions:** Considered, but not utilized for this calculation.
- (3) **Amount of the pollutant:** Considered, but not utilized for this calculation.
- (4) **Toxicity or nature of the pollutant:** Stack testing is required to demonstrate that levels of the following air pollutants are in accordance with the requirements of the 2024 Permit: nitrogen oxide, carbon monoxide, volatile organic compounds, sulfur dioxide, particulate matter, ammonia, and toxic air contaminants (1,3-butadiene, acetaldehyde, acrolein, benzene, ethylene dibromide, formaldehyde and naphthalene). Respondent performed stack tests on the Flares and Odor Control Wet Scrubber and the results showed that the Facility was operating in compliance with the 2024 Permit.
- (5) **Duration of the violation:** Ongoing, approximately 27 months to date. Emissions testing was required to have been conducted within 180 days of issuance of the 2021 Permit (or by 15 February 2022). The October Letter approved Respondent's request to perform stack tests on the Engines and Digestive Dryer Wet Scrubber within 180 days of issuance of the 2024 Permit (or by 26 November 2024). No penalty was assessed for the period of 5 October 2023 to 26 November 2024. The penalty calculation was based on noncompliance from 16 February 2022 through 4 October 2023 (approximately 19 months) and from 27 November 2024 to date (approximately 8 months).
- (6) **Areal extent of the violation:** Considered, but not utilized for this calculation.
- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to take reasonable and appropriate steps to prevent the noncompliance. RIDEM is not aware of what steps, if any, Respondent has taken to mitigate the noncompliance. Respondent was issued an informal notice by RIDEM on 24 August 2023 requiring that Respondent conduct the stack tests; however, Respondent has failed to comply with the notice.

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- (8) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit, or approval issued or adopted by RIDEM, or any law which RIDEM has the authority or responsibility to enforce:** Considered, but not utilized for this calculation.
- (9) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Respondent had complete control over the violation. Respondent operates the Facility. The violation was foreseeable by Respondent.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** RIDEM could have assessed a maximum penalty of \$10,000 per day of noncompliance for each of the 3 stack tests.

MAJOR	<u>X</u> MODERATE	MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$10,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$5,000 to \$10,000	\$2,500 to \$5,000	\$1,000 to \$2,500
	MODERATE	\$2,500 to \$5,000 \$2,500	\$1,000 to \$2,500	\$500 to \$1,000
	MINOR	\$1,000 to \$2,500	\$500 to \$1,000	\$100 to \$500

PENALTY MATRIX WORKSHEET

CITATION: Failure to comply with permit conditions (Stack testing for Flares)

VIOLATION NO.: D (1)

TYPE

X TYPE I

DIRECTLY related to protecting health, safety, welfare, or environment.

TYPE II

INDIRECTLY related to protecting health, safety, welfare, or environment.

TYPE III

INCIDENTAL to protecting health, safety, welfare, or environment.

DEVIATION FROM THE STANDARD

THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.

FACTORS CONSIDERED:

Taken from Part 1.10(A)(1)(b) of the Penalty Rules.

- (1) **The extent to which the act or failure to act was out of compliance:** Respondent failed to complete emission/stack testing for the Flares as required. The Facility is a stationary source of air pollutants subject to the APC Rules. Compliance with emissions/stack testing requirements of the permit is of importance to the regulatory program.
- (2) **Environmental conditions:** Considered, but not utilized for this calculation.
- (3) **Amount of the pollutant:** Considered, but not utilized for this calculation.
- (4) **Toxicity or nature of the pollutant:** Stack testing is required to demonstrate that levels of air pollutants are in accordance with conditions II.A.1 and II.A.2 of the 2024 Permit for each flare. Respondent performed stack tests on the Flares and Odor Control Wet Scrubber and the results showed that the Facility was operating in compliance with the 2024 Permit.
- (5) **Duration of the violation:** Approximately 20 months. Emissions testing was required to have been conducted within 180 days of issuance of the 2021 Permit (or by 15 February 2022). The October Letter approved Respondent's request to perform stack tests on the Flares within 180 days of issuance of the 2024 Permit (or by 26 November 2024). No penalty was assessed for the period of 5 October 2023 to 26 November 2024. The penalty calculation was based on noncompliance from 16 February 2022 through 4 October 2023 (approximately 19 months) and from 27 November 2024 to 5 January 2025 (approximately 1 month).
- (6) **Areal extent of the violation:** Considered, but not utilized for this calculation.
- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to take reasonable and appropriate steps to prevent the noncompliance. Respondent mitigated the noncompliance by performing the stack tests.

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- (8) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit, or approval issued or adopted by RIDEM, or any law which RIDEM has the authority or responsibility to enforce:** Considered, but not utilized for this calculation.
- (9) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Respondent had complete control over the violation. Respondent operates the Facility. The violation was foreseeable by Respondent.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** RIDEM could have assessed a maximum penalty of \$10,000 per day of noncompliance for each of the 2 stack tests.

MAJOR	<u>X</u> MODERATE	MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$10,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$5,000 to \$10,000	\$2,500 to \$5,000	\$1,000 to \$2,500
	MODERATE	\$2,500 to \$5,000 \$2,500	\$1,000 to \$2,500	\$500 to \$1,000
	MINOR	\$1,000 to \$2,500	\$500 to \$1,000	\$100 to \$500

PENALTY MATRIX WORKSHEET

CITATION: Failure to comply with permit conditions (Monitoring & Record Keeping and Reporting requirements)

VIOLATION NO.: D (1)

TYPE

____ TYPE I

DIRECTLY related to protecting health, safety, welfare, or environment.

X TYPE II

INDIRECTLY related to protecting health, safety, welfare, or environment.

____ TYPE III

INCIDENTAL to protecting health, safety, welfare, or environment.

DEVIATION FROM THE STANDARD

THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.

FACTORS CONSIDERED:

Taken from Part 1.10(A)(1)(b) of the Penalty Rules.

- (1) **The extent to which the act or failure to act was out of compliance:** Respondent failed to record the pressure drop, liquid flow rate, and the set point frequency of the purge for the Digestive Dryer Wet Scrubber and failed to record the scrubber liquid flow rate in the H₂S pretreatment system. The Facility is a stationary source of air pollutants subject to the APC Rules. Compliance with monitoring and record keeping and reporting requirements of the 2024 Permit is of importance to the regulatory program.
- (2) **Environmental conditions:** Considered, but not utilized for this calculation.
- (3) **Amount of the pollutant:** Considered, but not utilized for this calculation.
- (4) **Toxicity or nature of the pollutant:** Considered, but not utilized for this calculation.
- (5) **Duration of the violation:** Digestive Dryer Wet Scrubber (pressure drop and liquid flow rate) – from approximately 18 August 2021 until 20 June 2023 when the unit went offline, 1 year and 10 months.
Digestive Dryer Wet Scrubber (set point frequency of the purge valve) – from approximately 1 November 2022 until 20 June 2023 when the unit went offline, approximately 7 months
H₂S pretreatment system - from approximately 18 August 2021 until 9 May 2024, 2 years and 8 months.
- (6) **Areal extent of the violation:** Considered, but not utilized for this calculation.

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to take reasonable and appropriate steps to prevent the noncompliance. Respondent mitigated the noncompliance when the digestate dryer was taken offline, and when it began recording the liquid flow rate for the H2s pretreatment system as required.
- (8) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit, or approval issued or adopted by RIDEM, or any law which RIDEM has the authority or responsibility to enforce:** Considered, but not utilized for this calculation.
- (9) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Respondent had complete control over the violation. Respondent operates the Facility. The violation was foreseeable by Respondent.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation

<u> X </u> MAJOR	MODERATE	MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$10,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$5,000 to \$10,000	\$2,500 to \$5,000 \$5,000	\$1,000 to \$2,500
	MODERATE	\$2,500 to \$5,000	\$1,000 to \$2,500	\$500 to \$1,000
	MINOR	\$1,000 to \$2,500	\$500 to \$1,000	\$100 to \$500

PENALTY MATRIX WORKSHEET

CITATION: Failure to comply with operating requirements (Excess emissions during a malfunction)

VIOLATION NOs.: D (2) and D (3)

TYPE

 X TYPE I

DIRECTLY related to protecting health, safety, welfare, or environment.

 TYPE II

INDIRECTLY related to protecting health, safety, welfare, or environment.

 TYPE III

INCIDENTAL to protecting health, safety, welfare, or environment.

DEVIATION FROM THE STANDARD

THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.

FACTORS CONSIDERED:

Taken from Part 1.10(A)(1)(b) of the Penalty Rules.

- (1) **The extent to which the act or failure to act was out of compliance:** Respondent failed to operate air pollution control devices according to design while in operation, resulting in excess emissions during multiple malfunctions. The Facility is a stationary source of air pollutants subject to the APC Rules. Preventing excess emissions is of major importance to the regulatory program.
- (2) **Environmental conditions:** The area surrounding the Facility is developed with numerous commercial and industrial businesses, along with medium low density and medium density residential neighborhoods. The Facility is within 300 feet of the nearest business and 400 feet of the nearest residences. An interstate highway corridor (Route I-295) is located 1000 feet of the Facility. The Facility is within 3,000 feet of the Rhode Island Resource Recovery (Central Landfill).
- (3) **Amount of the pollutant:** 20 February 2024 – unknown; 21 February 2024 – unknown; 6 March 2024 – unknown; 1 September 2024 – estimated 386,310 cubic feet of biogas.
- (4) **Toxicity or nature of the pollutant:** Untreated biogas vented directly to the atmosphere. Untreated biogas discharge can significantly harm the environment by releasing potent greenhouse gases like methane, contributing to climate change. Additionally, the release of foul odors can be a nuisance to nearby communities.
- (5) **Duration of the violation:** 20 February 2024 for 1 hour 33 minutes; 21 February 2024 for 2 hours and 40 minutes; 6 March 2024 for 4 hours; 1 September 2024 for 13 hours and 35 minutes.
- (6) **Areal extent of the violation:** Considered, but not utilized.
- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent took steps to attempt to mitigate the non-compliance after the first two venting incidents by installing and implementing a failsafe remedy on 23 February 2024. However, the third and fourth venting incidents on 6 March 2024 and 1 September 2024, the two longest incidents, occurred after these steps were taken. Respondent stated in a 19 September 2024 letter that additional steps were taken to mitigate the noncompliance after the 1 September 2024 incident.

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- (8) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit, or approval issued or adopted by RIDEM, or any law which RIDEM has the authority or responsibility to enforce:** Considered, but not utilized for this calculation.
- (9) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Respondent has complete control over the violation. Respondent operates the Facility. The violation was foreseeable by Respondent. Respondent stated in the 19 September 2024 letter that on the date of the 1 September 2024 incident, Facility staff were present when the venting alarm went off at 4:52 pm, however staff did not notice the alarm, and did not correct the violation until the following morning on 2 September 2024 at 6:27 am, resulting in venting for almost 14 hours.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

<u>X</u> MAJOR	MODERATE	MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$10,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$5,000 to \$10,000 \$10,000	\$2,500 to \$5,000	\$1,000 to \$2,500
	MODERATE	\$2,500 to \$5,000	\$1,000 to \$2,500	\$500 to \$1,000
	MINOR	\$1,000 to \$2,500	\$500 to \$1,000	\$100 to \$500